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OFFICE OF PETITIONS

In re Application of
Yates Jr., et al.
Application No. 09/385,394
Filed: August 30, 1999
Attorney Docket No. 005231.03-4000

DECISION ON PETITION
UNDER 37 CFR 1.181(a)(3)

This is a decision on the petition under 37 CFR 1.181(a)(3) filed July 15, 2003, to invoke the supervisory authority of the Director to (1) overturn the decision of the Group Director of Technology Center 2183 (Group Director) of May 2, 2003, which refused withdrawal of the finality of the Office action of October 1, 2002, (2) withdraw the finality of the October 1, 2002, Office action, and (3) refund the extension, Notice of Appeal, and RCE fees paid.

The petition under 37 CFR 1.181(a)(3) filed July 15, 2003 requesting the decision of the Group Director of May 2, 2003, which refused withdrawal of the finality of the Office action of October 1, 2002, be overturned, and the finality of the October 1, 2002, Office action be withdrawn, is **DISMISSED AS MOOT**.

The petition under 37 CFR 1.181(a)(3) filed July 15, 2003, requesting that the extension of time, Notice of Appeal, and RCE fees paid be refunded, is **DENIED**.

BACKGROUND

A first (non final) Office action treating claims 1 through 95 was mailed February 20, 2002. Claims 1, 2, 4 through 18, 21 through 28, 30 through 33, 37 through 59, 61 through 75, 77, 78 and 94 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,481,684 to Richter et al. ("Richter"). Claims 3, 19, 29, 76, 79 through 85, 87 through 93, and 95 were rejected under 35 USC § 103(a) over Richter. Claims 20, 23 through 26, 60, and 86 were objected to as depending on a rejected base claim, but were indicated as being allowable if rewritten to include all limitations of the base claim.

A reply, along with a petition for an extension of time (and fee) to the outstanding Office action was filed on June 26, 2002. The accompanying amendment amended claims 1 through 4, 14, 15, 18, 20 through 24, 27, 33, 34, 37, 38, 42, 44, 50, 53 through 57, 59, 61 through 69, 73, 76, 77, 84, 85, 87, 92 and 94, and presented new claims 96 through 133.

A final Office action under 37 CFR 1.113 was mailed October 1, 2002. This Office action treated claims 1 through 133. Claims 1 through 21, and 37 through 50, were allowed. Claims 22 through 28, 30 through 33, 51 through 59, and 61 through 133 were rejected: claims 51 through 59, 61 through 75, 77, 78 and 94 were rejected under 35 USC 102(b) over Richter. Claims 22 through 33, 76, 79 through 95, 87 through 93 and 95 were rejected under 35 USC 103(a) over Richter, both rejections incorporated by reference the grounds of rejection set forth in the previous Office action. New claims 96 through 98, 102 through 111, 113 through 115, and 128 through 133 were rejected under 35 U.S.C. § 102(b) over Richter for reasons set forth in the current Office action. Likewise, claims 99 through 101, 112, 116 through 127 were rejected under 35 U.S.C.

§ 103(a) over Richter for reasons set forth in the current Office action. Claims 34 through 36, and 60 were objected to as depending on a rejected base claim, but were indicated as being allowable if rewritten to include all limitations of the base claim.

On December 2, 2002, applicants filed by facsimile transmission a communication styled as a request for withdrawal of finality of the outstanding Office action. On the same date applicants also filed by facsimile transmission an amendment in reply under 37 CFR 1.113(c) to the final Office action.

On February 10, 2003, an Office communication was mailed in which the examiner indicated that the finality of the outstanding Office action was being maintained, and that the period for reply to that action continued to run.

On March 9, 2003, a communication styled as a renewed request for withdrawal of the finality of the Office action of October 1, 2003, was filed by facsimile transmission.

On March 12, 2003, an Office communication styled as an Advisory Action was mailed which indicated that (1) it was responsive to the renewed request filed March 9, 2003, for withdrawal of the finality, (2) the finality of the outstanding Office action was being maintained and (3) the period for reply continued to run.

A telephonic interview was conducted on March 18, 2003, between counsel for applicants and the examiner, as memorialized in the Interview Summary mailed March 27, 2003.

A communication styled as a third request for withdrawal of the finality of the outstanding Office action as well as a summary of the telephonic interview was filed by facsimile transmission on March 24, 2003, and a duplicate copy was also filed by e-mail, and given a date of receipt of March 23, 2003.

A telephonic Interview was conducted on March 27, 2003, between counsel for applicants and the examiner, as memorialized in the Interview Summary mailed April 14, 2003.

On March 28, 2003, an Office communication styled as an Advisory Action was mailed which indicated that (1) it was responsive to the third request for withdrawal of the finality filed March 24, 2003, (2) the finality of the outstanding Office action was being maintained, and (3) the period for reply continued to run.

On May 2, 2003, applicants filed a Notice of Appeal and the fee required by law. Also on the same date applicants filed a petition under 37 CFR 1.181, and a supplement to the petition, seeking that the finality of the Office action of October 1, 2002, be withdrawn.

On May 22, 2003, the Group Director denied the petitions filed May 2, 2003.

On July 3, 2003, applicants filed *inter alia*, a request for a one month extension of time (and fee), as well as a Request for Continued Examination (RCE) (and fee), and a submission under 37 CFR 1.114. The associated fees were processed on July 7, 2003, and the RCE and submission were entered into the file on July 11, 2003.

On July 15, 2003, applicants filed the instant petition.